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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 140829733-4733-01]

RIN 0648- BE35

2015 Annual Determination to Implement the Sea Turtle Observer Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes a proposed Annual Determination (AD) for 2015, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes and to implement the prohibition against sea turtle takes. Fisheries identified on the 2015 AD (see Table 1) will be eligible to carry observers as of January 1, 2015 and will remain on the AD for a five year period. The fisheries listed on the final determination will be required to carry observers upon NMFS' request until December 31, 2019.

DATES: Comments must be received by [insert date 30 calendar days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-

2014-0108” by any of the following methods:

- Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).
- Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Sea Turtle Annual Determination, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs at OIRA_submissions@omb.eop.gov.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter “N/A” in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, Office of Protected Resources, 301-427-8402; Ellen Keane, Greater Atlantic Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Dan Lawson, West Coast Region, 562-980-3209; Irene Kelly, Pacific

Islands Region, 808-725-5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) may be obtained at <http://www.nmfs.noaa.gov/pr/interactions/lof/> and information regarding Marine Mammal Stock Assessment Reports may be obtained at <http://www.nmfs.noaa.gov/pr/sars/> or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1845 Wasp Blvd., Building 176. Honolulu, HI 96818.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 et seq., NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (Lepidochelys kempii), loggerhead (Caretta caretta; North Pacific distinct population segment), leatherback (Dermochelys coriacea), and hawksbill (Eretmochelys imbricata) sea turtles are listed as endangered. Loggerhead (Caretta caretta; Northwest Atlantic distinct population

segment), green (Chelonia mydas), and olive ridley (Lepidochelys olivacea) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates a regulation issued to implement the prohibition of take and the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in

order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for a period of five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to implement ESA take prohibitions and conserve turtles.

Process for Developing an Annual Determination

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed determination. The determination is based on the best available scientific,

commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports. Specifically, this determination is based on the extent to which:

- (1) The fishery operates in the same waters and at the same time as sea turtles are present;
- (2) The fishery operates at the same time or prior to elevated sea turtle strandings; or
- (3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and
- (4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

The AA uses the most recent version of the annually published MMPA List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. However, in preparing an AD we do not rely on the three-part MMPA classification scheme used for fisheries on the LOF. In addition, unlike the LOF, an AD may include recreational fisheries likely to interact with sea turtles on the basis of the best available information.

NMFS consulted with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, should be considered in the AD. Recommendations were received from six state agencies. Gear types recommended for consideration included gillnet, trawl, trap/pot, pound net, seine, and hook-and line. NMFS considered all recommendations carefully in developing the proposed list of fisheries to be included. Although the comments and recommendations provided to NMFS by states were based upon the best

available information on their fisheries, NMFS received more recommendations for fisheries to include on the 2015 AD than is feasible to propose at this time based on the four previously noted criteria (50 CFR 222.402(a)). The proposed AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles. For other fisheries, NMFS may already be addressing incidental take through another mechanism (e.g., rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). Note also that fisheries not included on the 2015 AD may still be observed under a different authority than the ESA (e.g., MMPA, MSA).

Notice of the final determination will be published in the Federal Register and made in writing to individuals permitted for each fishery identified on the AD. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and other means, as appropriate. Once included in the final determination, a fishery will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines that more than five years are needed to obtain sufficient scientific data, NMFS will include the fishery in the proposed AD again prior to the end of the fifth year.

In the 2010 AD, NMFS identified 19 fisheries that were required to carry observers for a period of five years, through December 31, 2014, if requested by NMFS. Because of a lack of resources to implement new observer programs or expand existing programs, NMFS has not identified any additional fisheries in the AD since 2010.

Review of Fisheries Listed on the 2010 AD

Eleven of the 19 fisheries listed on the 2010 AD are proposed for inclusion in the 2015 AD and are described further below. These fisheries include: the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery, California Halibut, White Seabass and Other Species Set Gillnet Fishery (>3.5 in mesh), California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery (mesh size >3.5 in. and <14 in.), Chesapeake Bay Inshore Gillnet Fishery, Long Island Inshore Gillnet Fishery, North Carolina Inshore Gillnet Fishery, Atlantic blue crab trap/pot, Atlantic Mixed Species Trap/Pot Fishery, Northeast/Mid-Atlantic American lobster trap/pot, Mid-Atlantic Haul/Beach Seine Fishery, and the Mid-Atlantic menhaden purse seine.

There were eight fisheries included on 2010 AD that are not proposed for inclusion in the 2015 AD. However, NMFS may determine that any of these fisheries should be included in a subsequent AD. A summary of these eight fisheries is provided below.

Atlantic Shellfish Bottom Trawl Fishery

The Atlantic shellfish bottom trawl fishery (estimated > 58 vessels/persons) encompasses the calico scallop trawl, crab trawl, Georgia/South Carolina/Maryland whelk trawl, Gulf of Maine/Mid-Atlantic sea scallop trawl, and Gulf of Maine northern shrimp trawl (71 FR 2006, January 4, 2006). This fishery extends from Maine through Florida. The fishery is managed through Federal and interstate fishery management plans (FMPs).

This fishery is classified as Category III on the MMPA LOF; however, portions of the fishery have been observed at low levels under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) authority and by the Georgia Department of Natural Resources (GA DNR). Since 2010, under the authority of the MSA, and the AD, NMFS has observed trips in this fishery, including 33 trips in 2010, 10 trips in 2011, 12 trips in 2012, and 20 trips in 2013.

Bottom trawl gear is known to interact with sea turtles. However, as noted above, this fishery is currently observed under MSA authority. In accordance with the criteria for listing a fishery on the AD, described above, NMFS is not proposing this fishery for inclusion in the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage.

Mid-Atlantic Bottom Trawl Fishery

Bottom otter trawl nets include a variety of net types, including flynets, which are high profile trawls. The Mid-Atlantic bottom trawl fishery includes both the Mid-Atlantic bottom trawl fishery and the Mid-Atlantic flynet fishery as defined on the LOF.

The Mid-Atlantic bottom trawl fishery (631 vessels/persons), uses bottom trawl gear to target species including, but not limited to, bluefish, croaker, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, and black sea bass. The fishery occurs year-round from Cape Cod, Massachusetts, to Cape Hatteras, North Carolina, in waters west of 72° 30' W. long. and north of a line extending due east from the North Carolina/South Carolina border. The gear is managed by several state and Federal FMPs.

The Mid-Atlantic bottom trawl fishery and the Mid-Atlantic flynet fishery are currently classified as Category II on the MMPA LOF, which authorizes NMFS to observe these fisheries for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. These fisheries are also observed through MSA authority. Between 2007-2011, estimated observer coverage year-round in this fishery was 3%, 3%, 5%, 6%, and 8%, respectively, as reported in NOAA Technical Memorandum NMFS-NE-228, the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments – 2013.

Bottom trawl gear is known to interact with sea turtles. However, as noted above,

components of this fishery are currently observed under MSA and MMPA authority. In accordance with the criteria for listing a fishery on the AD, described above, NMFS is not proposing this fishery for inclusion in the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage.

Mid-Atlantic Mid-water Trawl (Including Pair Trawl) Fishery

The Mid-Atlantic mid-water trawl fishery (estimated 322 vessels/persons) primarily targets Atlantic mackerel, chub mackerel, and miscellaneous other pelagic species. This fishery consists of both single and pair trawls, which are designed, capable, or used to fish for pelagic species with no portion of the gear designed to be operated in contact with the bottom. The fishery for Atlantic mackerel occurs primarily from southern New England through the Mid-Atlantic from January to March and in the Gulf of Maine during the summer and fall (May to December).

The Mid-Atlantic mid-water trawl fishery is currently classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. During 2007-2011, estimated observer coverage year-round in this fishery was 3.9%, 13%, 13%, 25%, and 41% respectively, as reported in NOAA Technical Memorandum NMFS-NE-228, the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments – 2013. Trawl gear is known to interact with sea turtles. However, as noted above, this fishery is currently observed under MSA and MMPA authority. In accordance with the criteria for listing a fishery on the AD, described above, NMFS is not proposing this fishery for inclusion in the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage.

Mid-Atlantic Gillnet Fishery

The Mid-Atlantic gillnet fishery (estimated 5,509 vessels/persons) targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5-12 in. (6.4-30.5 cm), and string lengths from 150-8,400 ft. (46-2,560 m). This fishery operates year-round west of a line drawn at 72° 30' W. long. south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border, not including waters where inshore gillnet fisheries (i.e., Chesapeake Bay, North Carolina, Long Island Sound inshore gillnet fisheries) operate in bays, estuaries, and rivers. This fishery includes any residual large pelagic driftnet effort in the Mid-Atlantic and any shark and dogfish gillnet effort in the Mid-Atlantic zone described. The fishing occurs right off the beach (6 ft. [1.8 m]) or in nearshore coastal waters to offshore waters (250 ft. [76 m]).

Gear in this fishery is managed by several Federal FMPs and Interstate FMPs managed by the Atlantic States Marine Fisheries Commission (ASMFC). These fisheries are primarily managed by total allowable catch (TAC); individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to

observe this fishery in state and Federal waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. During 2007-2011, estimated observer coverage year-round in this fishery was 6%, 3%, 3%, 4%, and 2% respectively, as reported in NOAA Technical Memorandum NMFS-NE-228, the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments – 2013.

Gillnet gear is known to interact with sea turtles. However, as noted above, this fishery is currently observed under MSA and MMPA authority. In accordance with the criteria for listing a fishery on the AD, described above, NMFS is not proposing this fishery for inclusion in the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage.

Northeast Sink Gillnet Fishery

The Northeast sink gillnet fishery (estimated 4,375 vessels/persons) targets Atlantic cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, spiny dogfish, monkfish, silver hake, red hake, white hake, ocean pout, skate spp, mackerel, redfish, and shad. This fishery uses sink gillnet gear, which is anchored gillnet (bottom-tending net) gear fished in the lower one-third of the water column. The dominant material is monofilament twine with stretched mesh sizes from 6-12 in (15-30.5 cm) and string lengths from 600-10,500 ft. (183-3,200 m), depending on the target species. Large mesh (10-14 in [25-35.6 cm]) sink gillnets, either tied down or set upright without floats using a polyfoam core floatline, are used when targeting monkfish. The fishery operates from the U.S.-Canada border to Long Island, New York, at 72° 30' W. long. south to 36° 33.03' N. lat. (corresponding with the Virginia/North Carolina border) and east to the eastern edge of the EEZ, including the Gulf of Maine, Georges Bank, and Southern New England, and excluding Long

Island Sound or other waters where gillnet fisheries are classified as Category III on the MMPA LOF. Fishing effort occurs year-round, peaking from May to July primarily on continental shelf regions in depths from 30-750 ft. (9-228.6 m), with some nets deeper than 800 ft. (244 m).

Several interstate and Federal FMPs manage this fishery. In addition, the Atlantic Large Whale Take Reduction Plan and the Harbor Porpoise Take Reduction Plan manage the fishery to reduce the risk of entanglement of right, humpback, and fin whales, and harbor porpoises, respectively. The fishery is primarily managed through TAC limits; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to observe this fishery in state and Federal waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. During 2007-2011, estimated observer coverage year-round in this fishery was 7%, 5%, 4%, 17%, and 19% respectively, as reported in NOAA Technical Memorandum NMFS-NE-228, the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments – 2013.

Gillnet gear is known to interact with sea turtles. However, as noted above, this fishery is currently observed under MSA and MMPA authority. In accordance with the criteria for listing a fishery on the AD, described above, NMFS is not proposing this fishery for inclusion in the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage.

Southeast Atlantic Gillnet Fishery

The Southeast Atlantic gillnet fishery (estimated 357 vessels/persons) targets finfish, including king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little

tunny, bonita, jack crevalle, cobia, and striped mullet. This fishery does not include gillnet effort targeting sharks as part of the Southeastern U.S. Atlantic shark gillnet fishery. This fishery uses gillnets set in sink, stab, set, or strike fashion. The fishery operates in waters south of a line extending due east from the North Carolina-South Carolina border and south and east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico. The majority of fishing effort occurs in Federal waters since South Carolina, Georgia, and Florida prohibit the use of gillnets, with limited exceptions, in state waters.

Fishing for king mackerel, Spanish mackerel, cobia, cero, and little tunny in Federal waters is managed under the Coastal Migratory Pelagic Resources FMP. None of the other target species are Federally-managed under the MSA. In state waters, state and ASMFC Interstate FMPs apply.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state and federal waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has previously observed this fishery at moderate levels, primarily focused on target catch and bycatch species other than sea turtles. No observer coverage has been achieved since this fishery was listed on the 2010 AD. NMFS is not proposing this fishery for inclusion in the 2015 AD as NMFS does not intend to monitor this fishery specifically for sea turtles at this time.

Virginia Pound Net Fishery

The Virginia pound net fishery (estimated 67 vessels/persons) targets species, including croaker, menhaden, striped bass, and spot, using stationary gear in nearshore Virginia waters, primarily in the Chesapeake Bay and its tributaries. Pound net gear includes a leader posted

perpendicular to the shoreline and extending outward, which funnels the fish into the pound, where the catch accumulates. This fishery includes all pound net effort in Virginia State waters, including waters inside the Chesapeake Bay. The fishery is managed under Interstate FMPs for Atlantic croaker and spot.

The Virginia pound net fishery is currently classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. Loggerhead, Kemp's ridley, leatherback, and green turtles have been observed taken in this fishery. The Northeast Fisheries Observer Program conducted monitoring in this fishery in 2009 from August 23 to October 4 and in 2010 from mid-May to early August.

NMFS currently requires the use of a modified pound net leader in certain areas of the Chesapeake Bay to reduce entanglements of sea turtles in this gear type (71 FR 36024, June 23, 2006). This fishery operates at the same time as historically elevated sea turtle strandings.

On April 17, 2014, NMFS published a proposed rule (79 FR 21695) to amend the Bottlenose Dolphin Take Reduction Plan (BDTRP) and its implementing regulations under the Marine Mammal Protection Act (MMPA). The BDTRP rule proposes the year-round use of modified pound net leaders for offshore Virginia pound nets in specified waters of the lower mainstem Chesapeake Bay and coastal state waters. Virginia pound net-related definitions, gear prohibitions, and non-regulatory measures are also proposed. Both regulatory and non-regulatory measures proposed in that rule are based on the Bottlenose Dolphin Take Reduction Team's consensus recommendations. The implementation of this final regulation would benefit sea turtles.

While the Virginia pound net fishery remains a concern for sea turtle incidental take, NMFS is not proposing its inclusion on the 2015 AD because NMFS does not intend to monitor the fishery at this time. Existing regulations to address sea turtle mortality in the pound net leaders and proposed regulations to address bottlenose dolphin mortality in pound net leaders provide benefit to sea turtles. Further, most of the takes that occur in the pound are live turtles that are released uninjured and, when observed, an alternative platform is used.

U.S. Mid-Atlantic Mixed Species Stop Seine/Weir/Pound Net (Except the North Carolina Roe Mullet Stop Net) Fishery

The Mid-Atlantic mixed species stop seine/weir/pound net fishery (unknown number of vessels/persons) targets several species, including, but not limited to, weakfish, striped bass, shark, catfish, menhaden, flounder, gizzard shad, and white perch. The fishery uses fixed or staked net gear (pound net, weir, staked trap) from Nantucket Sound to Chesapeake Bay (60 FR 31681, June 16, 1995); the Virginia pound net and the North Carolina roe mullet stop net fisheries are not included as part of this fishery.

This fishery is classified as Category III on the MMPA LOF and was listed on the 2010 AD, but it has never been observed. As discussed above, this gear type is known to interact with sea turtles, however, NMFS does not intend to monitor the fishery at this time and is not proposing this fishery for inclusion in the 2015 AD.

Implementation of Observer Coverage in a Fishery Listed in the 2015 AD

As part of the proposed 2015 AD, NMFS has included, to the extent practicable, information on the fisheries or gear types to be observed, geographic and seasonal scope of coverage, and any other relevant information. For each of these fisheries or gear types, NMFS

intends to monitor the fishery and anticipates that it will have the funds to do so. After publication of a final AD, a 30-day delay in effective date for implementing observer coverage will follow, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay.

The design of any observer program for fisheries identified through the AD process, including how observers would be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions and will ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program design, NMFS will be guided by the following standards for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries:

- (1) The requirement to obtain the best available scientific information;
- (2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;
- (3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and
- (4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746. Specifically, 50 CFR 600.746(c) requires vessels to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast

Guard Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed on the vessel is prohibited from fishing (50 CFR 600.746(f)) unless NMFS determines that an alternative platform (e.g., a second vessel) may be used, or determines that a vessel with inadequate or unsafe facilities is not be required to take an observer under 50 CFR 222.404. In any case, all fishermen on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 would be required to be consistent with existing observer-related NOAA policies and regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 et seq.), the Service Contract Act (41 U.S.C. 351 et seq.), Observer Health and Safety regulations (50 CFR part 600), and other relevant policies.

Again, note that fisheries not included on the 2015 AD may still be observed under a different authority than the ESA (e.g., MMPA, MSA). Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: <http://www.st.nmfs.noaa.gov/observer-home/>; links to individual regional observer programs may also be found on this website.

Sea Turtle Distribution

Atlantic Ocean and Gulf of Mexico

Sea turtle species found in waters of the Atlantic Ocean and Gulf of Mexico include green, hawksbill, Kemp's ridley, leatherback, and loggerhead turtles. The waters off the U.S. east coast and Gulf of Mexico provide important foraging, breeding, and migrating habitat for these species. Further, the southeastern United States, from North Carolina through the Florida

Gulf coast, is a major sea turtle nesting area for loggerhead, leatherback, and green turtles, and, to a lesser extent, Kemp's ridley and hawksbill turtles.

Four species – green, Kemp's ridley, leatherback, and loggerhead turtles – occur seasonally in New England and Mid-Atlantic continental shelf waters north of Cape Hatteras, North Carolina. The occurrence of these species in these waters is largely temperature dependent. In general, some turtles move up the coast from southern wintering areas as water temperatures warm in the spring. The trend is reversed in the fall as water temperatures decrease. By December, turtles that migrated northward have returned to more southern waters for the winter. Hard-shelled species are most commonly found south of Cape Cod, Massachusetts. Leatherbacks are regularly found as far north in U.S. waters as the Gulf of Maine in the summer and fall.

Green turtles are found in inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico. While foraging and developmental habitats also occur in the wider Caribbean, important feeding areas in Florida include the Indian River Lagoon, the Florida Keys, Florida Bay, Homosassa, Crystal River, Cedar Key, and St. Joseph Bay. The bays and sounds of North Carolina also provide important foraging habitat for green turtles.

In the Atlantic, hawksbills are most common in Puerto Rico and its associated islands and in the U.S. Virgin Islands. In the continental United States, the species is primarily recorded from south Texas and south Florida and infrequently from the remaining Gulf states and north of Florida. Kemp's ridleys are distributed throughout waters of the Gulf of Mexico and U.S. Atlantic coast from Florida to New England. The major nesting area for Kemp's ridleys is in Tamaulipas, Mexico, with limited nesting extending to the Texas coast.

Loggerheads occur throughout the Atlantic and Gulf of Mexico, ranging from inshore shallow water habitats to deeper oceanic waters. The largest nesting assemblage of loggerheads in the world is found in the southeastern United States.

Adult leatherbacks are capable of tolerating a wide range of water temperature, and have been sighted along the entire continental coast of the United States as far north as the Gulf of Maine and south to Puerto Rico, the U.S. Virgin Islands, and into the Gulf of Mexico. The southeast coast of Florida represents a small, but growing, nesting area for leatherbacks in the western North Atlantic.

U.S. Pacific Ocean

Leatherback sea turtles are found consistently off the U.S. west coast, usually north of Point Conception, California. They are known to migrate to central and northern California from their natal beaches in the Western Pacific to feed on jellyfish during summer and fall.

Leatherback turtles usually appear in Monterey Bay and California coastal waters during August and September and move offshore in October and November. Other observed areas of summer leatherback concentration include northern California and the waters off Washington through northern Oregon, offshore from the Columbia River plume.

Green, loggerhead, and olive ridley sea turtles are rarely observed in the west coast EEZ, but records show that all species have stranded in California and the Pacific Northwest. Two small resident populations of green turtles have been identified in the southern California Bight, associated historically with the warm water outflows from power plants in San Diego Bay and the San Gabriel River in Long Beach, California. In the eastern Pacific, loggerheads have been reported as far north as Alaska and as far south as Chile. Occasional sightings are reported from

the coasts of Washington and Oregon, but most records are of juveniles off the coast of California. Based upon limited observer records, loggerheads travel into the southern California Bight during El Niño events (or warm water conditions similar to an El Niño). The majority of fishery interactions with loggerheads during El Niño conditions have occurred during the summer. Olive ridleys have been recorded stranded all along the U.S. west coast. Olive ridleys are believed to use warm water currents along the west coast for foraging. The specific distribution of olive ridleys along the U.S. west coast is unknown at this time.

Sea turtles occur throughout the Pacific Islands Region including the State of Hawaii and the U.S. territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). Green and hawksbill turtles are most common in nearshore waters while leatherbacks, loggerheads, and olive ridleys occur in offshore pelagic waters. Stock structure and population dynamics for some species in this region are poorly understood.

Sea Turtle Strandings

NMFS reviewed data collected by the Sea Turtle Stranding and Salvage Network (STSSN) to identify stranding trends and inform development of this proposed rule. The STSSN along the U.S. Atlantic and Gulf of Mexico coasts has documented strandings of six species: loggerhead, Kemp's ridley, green, leatherback, hawksbill, and olive ridley turtles, with loggerheads consistently representing the highest number of strandings. The Southeast United States consistently records the highest level of strandings during any given month, each year. Loggerhead sea turtles represent the highest number of annual strandings, followed by Kemp's ridley. Since 2010, the number of sea turtle strandings reported in the Northern Gulf of Mexico has increased, with Kemp's ridley strandings occurring in the highest numbers.

Based on the data reviewed, strandings have occurred in each month of the year, in the Northeast Atlantic, the Southeast Atlantic and the Gulf of Mexico; however, distinct trends are notable within each of these regions. In the Gulf and Southeast U.S. Atlantic regions, strandings consistently occur in every month of the year. In the Gulf region, the highest concentration of strandings occurs from March to July, with a notable peak in April and May. In the Southeast Atlantic region, the highest concentration of strandings occurs from March to November, with a notable peak in May and June. In the Northeast Atlantic region, strandings predominately occur between May and November of each year, with the highest concentration of strandings between June and September; strandings are uncommon in the winter and early spring.

On the U.S. west coast, strandings are infrequent compared to the Atlantic and Gulf of Mexico coasts. This is primarily due to species abundance and distribution. The STSSN in California has documented strandings of five species: green, leatherback, loggerhead, hawksbill, and olive ridley turtles. Strandings were documented in all months; data indicate a peak in strandings between July and October. Green turtles represent the highest number of strandings.

In the Pacific Islands region, strandings occur throughout the year, primarily green turtles and secondarily hawksbills in Hawaii, Guam, American Samoa, and CNMI. In Oregon and Washington, very few strandings are reported. Historical records include a few green, loggerhead, and olive ridley strandings.

Fisheries Proposed for Inclusion on the 2015 Annual Determination

NMFS is proposing to include 14 fisheries (12 in the Atlantic Ocean/Gulf of Mexico and 2 in the Pacific Ocean) on the 2015 AD. The 14 fisheries, described below and listed in Table 1, represent several gear types, including trawl, gillnet, trap/pot, and weir/seine.

The 2014 LOF (78 FR 73477) was used as the comprehensive list of commercial fisheries to evaluate for inclusion on the AD. The fishery name, definition, and number of vessels/persons for fisheries listed on the AD are taken from the most recent LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (i.e., Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA and collect sea turtle bycatch information.

Trawl Fisheries

Interactions with trawl fisheries are of particular concern for sea turtles, because forced submergence in any type of restrictive gear can lead to lack of oxygen and subsequent death by drowning. Metabolic changes that can impair a sea turtle's ability to function can occur within minutes of forced submergence (Lutcavage et al., 1997).

Trawls that are not outfitted with turtle excluder devices (TEDs) may result in forced submergence. Currently, only otter trawl fisheries capable of catching shrimp and operating south of Cape Charles, Virginia, and in the Gulf of Mexico as well as trawl fisheries targeting summer flounder south of Cape Charles, Virginia, in the summer flounder fishery-sea turtle protection area (50 CFR 222.102) are required to use TEDs.

Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery

The Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery (estimated 4950 vessels/persons) targets shrimp using various types of trawls; NMFS will focus on the component of the fishery that uses skimmer trawls for the 2015 AD. Skimmer trawls are used primarily in inshore/inland shallow waters (typically less than 20 ft. (6.1 m)) to target

shrimp. The skimmer trawl has a rigid “L”-shaped or triangular metal frame with the inboard portion of the frame attached to the vessel and the outboard portion attached to a skid that runs along the seabed.

Skimmer trawl use increased in response to TED requirements for shrimp bottom otter trawls. Skimmer trawls currently have no TED requirement but are subject to tow time limits of 55 minutes from April 1 to October 31 and 75 minutes from November 1 to March 31. Skimmer trawls are used in North Carolina, Florida (Gulf Coast), Alabama, Mississippi, and Louisiana. There are documented takes of sea turtles in skimmer trawls in North Carolina and the Gulf of Mexico. All Gulf of Mexico states, except Texas, include skimmer trawls as an allowable gear. In recent years, the skimmer trawl has become a major gear in the inshore shrimp fishery in the Northern Gulf and also has some use in inshore North Carolina. Louisiana hosts the vast majority of skimmer boats, with 2,248 skimmer and butterfly net trawlers reporting landings in 2008. In 2008, Mississippi had approximately 62 active skimmer, butterfly, and chopstick boats, Alabama had 60 active skimmer boats, and North Carolina had 97 skimmer vessels (NMFS 2014). However, skimmer vessels in North Carolina have declined in recent years to 64 active vessels in 2010.

Skimmer trawl effort overlaps with sea turtle distribution, and as noted above, takes have been reported. Although subject to tow times, the magnitude of sea turtle takes in this fishery are not well understood. In response to high numbers of sea turtle strandings since 2010, fishery observer effort was shifted from otter trawls to the inshore skimmer trawl fishery in the northern Gulf of Mexico during the summers of 2012, 2013, and 2014. In 2012, 119 sea days were observed in the skimmer fishery resulting in 24 sea turtles observations. In 2013, 145 sea days

were observed, resulting in 8 sea turtle observations. To date in 2014, 10 sea turtles have been observed in the skimmer trawl fishery.

Continued observer coverage to understand the scope and impact of turtle takes in this fishery is needed to implement the prohibitions of take, inform management decisions on what actions may be necessary to minimize and prevent sea turtle takes, and further sea turtle conservation and recovery.

The Southeastern U.S. Atlantic/Gulf of Mexico shrimp trawl fishery is classified as Category II on the MMPA LOF, and mandatory observer coverage in Federal waters began in 2007 under the MSA. The fishery is currently observed at approximately 1% of total fishery effort. The fishery was previously included in the 2010 AD, which allowed for observer coverage to be shifted to skimmer trawls to specifically investigate bycatch of sea turtles. NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery in the AD, because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in this fishery, and NMFS intends to continue to focus observer coverage in the component of the fishery that uses skimmer trawls.

Gulf of Mexico Mixed Species Trawl Fishery

The Gulf of Mexico Mixed Species Trawl Fishery (estimated 20 vessels/persons) targets fish using various types of trawl gear, including bottom otter trawl gear targeting sheepshead. This fishery is located in state waters, and is classified as Category III on the MMPA LOF. NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority, and this fishery was not included in the 2010 AD. NMFS proposes to include

this fishery in the 2015 AD pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery in the AD, because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types, mainly the shrimp trawl fishery, and NMFS intends to monitor this fishery.

Gillnet Fisheries

Sea turtles are vulnerable to entanglement and drowning in gillnets, especially when the gear is left unattended. The main risk to sea turtles from capture in gillnet gear is forced submergence. Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (e.g., 10-12 in. [25.4-30.5 cm] stretched mesh or greater) have been documented as particularly effective at capturing sea turtles. Additionally, sea turtles have been documented entangled in smaller mesh gillnets.

Given known interactions between sea turtles and this gear type, and the need to obtain more coverage on state inshore fisheries, NMFS proposes to include the California Halibut, White Seabass and Other Species Set Gillnet Fishery; California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery; Chesapeake Bay Inshore Gillnet Fishery; Long Island Inshore Gillnet Fishery; North Carolina Inshore Gillnet Fishery; and Gulf of Mexico Gillnet Fishery in the 2015 AD. Each of these fisheries, with the exception of the Gulf of Mexico Gillnet Fishery, was listed on the 2010 AD.

California Halibut, White Seabass and Other Species Set Gillnet Fishery (>3.5 in mesh)

The California halibut, white seabass, and other species set gillnet fishery (estimated 50 vessels/persons) targets halibut, white seabass, and other species from the U.S.-Mexico border north to Monterey Bay using 200 fathom (1,200 ft.; 366 m) gillnets with a stretch mesh size of

8.5 in (31.6 cm). Net soak duration is typically 8-10, 19-24, or 44-49 hours at a depth ranging from 15-50 fathoms (90-300 ft.; 27-91 m), with most sets from 15-35 fathoms (90-210 ft.; 27-64 m). No more than 1500 fathoms (9,000 ft.; 2,743 m) of gill or trammel net may be fished in combination for California halibut and angel shark. Fishing occurs year-round, with effort generally increasing during summer months and declining during the last three months of the year. The central California portion of the fishery from Point Arguello to Point Reyes has been closed since September 2002, following a state ban on gillnets inshore of 60 fathoms (360 ft.; 110 m). Since 1990, set gill nets have been prohibited in state waters south of Point Arguello and within 70 fathoms (420 ft.; 128 m) or one mile (1.6 km), whichever is less, around the Channel Islands. The California Department of Fish and Game (CDFG) manages the fishery as a limited entry fishery with gear restrictions and area closures.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was included in the 2010 AD. This fishery was observed at 13% of all trips in 2010, 8% in 2011, and 6% in 2012. During that time, no sea turtle bycatch was observed in the fishery. NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery in the AD, because it operates in the same waters that turtles are known to occur, this gear type is known to result in the incidental take of sea turtles based on documented takes, and NMFS intends to monitor this fishery.

California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery (mesh size >3.5 in. and <14 in.)

The California yellowtail, barracuda, and white seabass drift gillnet fishery (30 vessels/persons) targets primarily yellowtail and white seabass, and secondarily barracuda, with target species typically determined by market demand on a short-term basis. Drift gillnets are up to 6,000 ft. (1,829 m) long and are set at the surface. The mesh size depends on target species and is typically 6.0-6.5 in (15-16.5 cm). When targeting yellowtail and barracuda, the mesh size must be ≥ 3.5 in (9 cm); when targeting white seabass, the mesh size must be ≥ 6 in (15.2 cm). From June 16 to March 14 not more than 20 percent, by number, of a load of fish may be white seabass with a total length of 28 in (71 cm). A maximum of ten white seabass per load may be taken if taken in gillnet or trammel nets with meshes from 3.5-6.0 in (9-15 cm) in length. The fishery operates year-round, primarily south of Point Conception with some effort around San Clemente Island and San Nicolas Island. This fishery is a limited entry fishery with various gear restrictions and area closures managed by the CDFG.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was included in the 2010 AD. This fishery was observed at 5% of all trips in 2010, 3% in 2011, and 1% in 2012. During that time, no sea turtle bycatch was observed in the fishery. NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery in the AD because it operates in the same waters that turtles are known to occur, this gear type is known to result in the incidental take of sea turtles based on documented takes, and NMFS intends to monitor this fishery.

Chesapeake Bay Inshore Gillnet Fishery

The Chesapeake Bay inshore gillnet fishery (estimated 1,126 vessels/persons) targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.875-5 in (7.3-12.7 cm), depending on the target species. The fishery operates between the Chesapeake Bay Bridge-Tunnel and the mainland. The fishery is managed under the Interstate FMPs for Atlantic menhaden and Atlantic croaker. Gillnets in Chesapeake Bay also target striped bass and spot.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. There has been limited observer coverage in this fishery since 2010, with 12 observed trips in 2010, 1 observed trip in 2011, and 3 observed trips in 2013. To date, observer coverage in gillnet fisheries has focused on Federally-managed fisheries. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on interactions, NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Long Island Inshore Gillnet Fishery

The Long Island Sound inshore gillnet fishery (estimated 20 vessels/persons) includes all gillnet fisheries operating west of a line from the north fork of the eastern end of Long Island, New York (Orient Point to Plum Island to Fishers Island) to Watch Hill, Rhode Island (59 FR 43703, August 25, 1994). Target species include bluefish, striped bass, weakfish, and summer flounder.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010

AD. There has been limited observer coverage in this fishery since 2010. To date, observer coverage in gillnet fisheries has focused on Federally-managed fisheries. However, the NMFS Northeast Fisheries Observer Program has worked with the state of New York to develop a plan to achieve observer coverage in New York state waters between 2014 and 2017, which includes approximately 250 gillnet trips annually. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on interactions, and the new partnership with the State of New York, NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. NMFS also makes this proposal because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

North Carolina Inshore Gillnet Fishery

The North Carolina inshore gillnet fishery (approximately 1,323 vessels/persons) targets species including southern flounder, weakfish, bluefish, Atlantic croaker, striped mullet, spotted seatrout, Spanish mackerel, striped bass, spot, red drum, black drum, and shad. This fishery includes any fishing effort using any type of gillnet gear, including set (float and sink), drift, and runaround gillnet for any target species inshore of the COLREGS lines in North Carolina. This fishery is managed under state and ASMFC interstate FMPs, applying net and mesh size regulations, and seasonal area closures in the Pamlico Sound Gillnet Restricted Area.

NMFS issued two ESA section 10(a)(1)(B) permits for the North Carolina state-wide inshore gillnet fishery to incidentally take sea turtles in 2013, and to incidentally take Atlantic

sturgeon in 2014, which include all inshore, estuarine waters, including Core Sound and Pamlico Sound. The permits require the State of North Carolina to maintain a minimum of 7% observer coverage for large mesh gillnet in each state management area for the spring, summer, and fall seasons. It also requires a minimum of 2% observer coverage for small mesh gillnets. Since issuance of the sea turtle incidental take permit in September 2013, it is estimated that 216 green sea turtles (173 alive, 88 dead) and 15 Kemp's ridley sea turtles (all alive), have been incidentally taken in the inshore large mesh gillnet fishery. Additionally, 1 live green sea turtle was observed in the small mesh gillnet fishery.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. NMFS has observed this fishery with limited coverage since 2010, observing 42 trips in 2010, 18 trips in 2011, 22 trips in 2012, and 28 trips in 2013. Although the state is currently required to maintain observer coverage in inshore waters, NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in this fishery, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Gulf of Mexico Gillnet Fishery

The Gulf of Mexico Gillnet Fishery (estimated 724 vessels/persons) operates in state inshore waters, targeting finfish, including Spanish mackerel, king mackerel, striped mullet, Florida pompano, and southern flounder using sink gillnets and strike gillnets.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions and to collect information on sea turtles

should a take occur on an observed trip. To better characterize fishing effort and bycatch, the NMFS Southeast Gillnet Observer Program began placing observers on state commercial gillnet vessels in coastal Louisiana, Mississippi, and Alabama in 2012. NMFS proposes to include this fishery in the 2015 AD because sea turtles are known to occur in the same areas where the fishery operates and takes have been documented in similar other fisheries using gillnet gear, and NMFS intends to monitor this fishery.

Trap/Pot Fisheries

Sea turtles are known to become entangled in the buoy lines (also called vertical lines) of trap/pot gear, and there have been anecdotal reports that sea turtles may interact with the trap/pot itself. Turtles entangled in trap/pot gear may drown or suffer injuries (and potential subsequent mortality) due to constriction by the rope or line. Takes of both leatherback and hard-shelled sea turtles have been documented in this gear type. NMFS Greater Atlantic Region (GAR), formerly the Northeast Region, established the Northeast Atlantic Sea Turtle Disentanglement Network (STDN) in 2002 to respond to entanglements in vertical lines associated with trap/pot gear. Reports of entangled sea turtles come from fishermen, boaters, and the general public. Since 2002, entanglements in vertical lines have averaged 20.4 annually. Takes in 2012 and 2013 increased significantly with 41 and 56 takes documented in each year, respectively. These numbers include all vertical line interactions, the vast majority of which were identified as trap/pot gear (as opposed to gillnet gear). A more systematic data collection on these interactions is needed to begin understanding the extent to which interactions occur in order to implement the prohibitions against takes and how to prevent or mitigate takes.

Three pot/trap fisheries were included in the 2010 AD; Atlantic Blue Crab Trap/Pot Fishery, Atlantic Mixed Species Trap/Pot Fishery, and the Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery. However, limited or no observer coverage has been achieved in these fisheries since listing on the 2010 AD. While some pot/trap vessels can be observed through traditional methods, other vessels participating in these fisheries, especially in state waters, may be too small to carry observers, which create challenges for observer programs. Further discussions regarding the most appropriate and effective methodologies for observing the pot/trap fisheries will be beneficial. Therefore, as funds allow, the GAR is planning to convene, within the next year, subject matter experts to discuss new technologies that may apply to observing and mitigating sea turtle interactions in trap/pot fisheries, including the potential to observe through an alternative platform (i.e. a second vessel) program. New methods to more effectively monitor these fisheries may be developed and implemented as an outcome of this meeting.

Based on the input from the states, NMFS proposes to again include relist all three pot/trap fisheries in the 2015AD.

Atlantic Blue Crab Trap/Pot Fishery

The Atlantic blue crab trap/pot fishery (estimated 8,557 vessels/persons) targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. The pot position is marked by either a floating or sinking buoy line attached to a surface buoy. The fishery occurs year-round from the south shore of Long Island at 72° 30' W. long. in the Atlantic and east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), including state waters. The fishery is managed under state FMPs.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. However, since NMFS included this fishery in the 2010 AD, NMFS has been unable to observe the fishery, as discussed above. Accordingly, NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types (i.e. lobster pot fishery), and NMFS intends to monitor this fishery.

Atlantic Mixed Species Trap/Pot Fishery

The Atlantic mixed species trap/pot fishery (estimated 3,467 vessels/persons) targets species including hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish, and stone crab. The fishery includes all trap/pot operations from the Maine-Canada border south through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), but does not include the following trap/pot fisheries (as defined on the MMPA LOF): Northeast/Mid-Atlantic American lobster trap/pot; Atlantic blue crab trap/pot; Florida spiny lobster trap/pot; Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot; U.S. Mid-Atlantic eel trap/pot fisheries; and the Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery (68 FR 1421, January 10, 2003). The fishery is managed under various Interstate and Federal FMPs.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. However, since listing this fishery on the 2010 AD, NMFS has been unable to observe the fishery, as discussed above. Accordingly, NMFS proposes to again include this fishery pursuant

to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types (i.e. lobster pot fishery), and NMFS intends to monitor this fishery.

Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery

The Northeast/Mid-Atlantic American lobster trap/pot fishery (estimated 11,693 vessels/persons) targets American lobster primarily with traps, while 2-3 percent of the target species is taken by mobile gear (trawls and dredges). The fishery operates in inshore and offshore waters from Maine to New Jersey and may extend as far south as Cape Hatteras, North Carolina. Approximately 80 percent of American lobster is harvested from state waters; therefore, the ASMFC has the primary regulatory role. The fishery is managed in state waters under the ASMFC Interstate FMP and in Federal waters under the Atlantic Coastal Fisheries Cooperative Management Act.

This fishery is classified as Category I on the MMPA LOF and was included in the 2010 AD. Since that time, NMFS observed 22 lobster trips in 2013 and 32 trips in 2014, with 216 observation days planned for the 2014-2015 schedule. NMFS STDN has documented 83 leatherback entanglements in lobster trap gear operating in Maine, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey since 2002. These entanglements have occurred between May and October (STDN, unpublished data), which is the time period when observer coverage for this fishery will be focused.

NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same

areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery.

Weir/Seine/Floating Trap Fisheries

Pound net, weir, seine and floating trap fisheries may use mesh similar to that used in gillnets, but the gear is prosecuted differently from traditional gillnets. For example, pound net leaders have a mesh component similar to a gillnet; sea turtles have been documented entangled in pound net leaders. Pound net leaders in the Virginia portion of the Chesapeake Bay are subject to requirements designed to reduce sea turtle bycatch. Purse seines, weirs and floating traps also have the potential to entangle and drown sea turtles as they are set similarly to pound nets. Turtles have been documented in the pounds of pound net gear and/or weirs in Massachusetts, New York, Maryland, North Carolina, and Virginia. The turtles observed in these pounds have generally been alive and uninjured. In Virginia, sea turtles have been documented becoming entangled with the leader, which often results in mortality.

Four pound net/weir/seine fisheries were included on the 2010 AD: the Mid-Atlantic haul/beach seine, the Mid-Atlantic menhaden purse seine, the Mid-Atlantic mixed species stop seine/weir/pound net, and the Virginia pound net fishery. Based on the information provided by states and the best available scientific information, NMFS proposes to include again two of these fisheries: the Mid-Atlantic Haul/Beach Seine Fishery, Mid-Atlantic Menhaden Purse Seine Fishery, and add the Rhode Island Floating Trap Fishery on the 2015 AD.

Mid-Atlantic Haul/Beach Seine Fishery

The Mid-Atlantic haul/beach seine fishery (estimated 565 vessels/persons) targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvest fish using seines with one

end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The beach seines soak for less than 2 hours. The fishery occurs in waters west of 72° 30' W. long. and north of a line extending due east from the North Carolina-South Carolina border. Fishing on the Outer Banks, North Carolina occurs primarily in the spring (April to June) and fall (October to December). In the Chesapeake Bay, this gear has been historically fished in the southwest portion of the Bay with some effort in the northwest portion. Effort begins to increase in early May, peaks in early/mid-June, and continues into July. During this time, based on historical data from Virginia, approximately 100 haul seine trips occur. Beach haul seines have been documented to interact with sea turtles.

The fishery is managed under the Interstate FMPs for Bluefish and for Atlantic Striped Bass of the Atlantic Coast from Maine through North Carolina, and is subject to BDTRP implementing regulations.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. NMFS observed this fishery at low levels prior to 2008, but it has not been observed since then. NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD based on suspected interactions with sea turtles given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution. In the Chesapeake Bay, the fishery operates at the same time as historically elevated sea turtle strandings, and NMFS intends to monitor this fishery.

Mid-Atlantic Menhaden Purse Seine Fishery

The Mid-Atlantic menhaden purse seine fishery (estimated 5 vessels/persons) targets

menhaden and thread herring using purse seine gear. Most sets occur within 3 mi (4.8 km) of shore with the majority of the effort occurring off North Carolina from November to January, and moving northward during warmer months to southern New England. The fishery is managed under the Interstate FMP for Atlantic Menhaden. In the Chesapeake Bay, this fishery operates to a limited extent during a period of high sea turtle strandings (May and June). This fishery is classified as Category II on the MMPA LOF and was listed on the 2010 AD. NMFS has observed this fishery at low levels, with 9 trips observed in 2010, and 3 trips observed in 2012. NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD, given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution, and NMFS intends to monitor this fishery.

Rhode Island Floating Trap Fishery

The Rhode Island Floating Trap Fishery (estimated 9 vessels/persons) is a small fishery that sets traps similar to a weir/pound net seasonally (May-October) targeting scup, striped sea bass, and squid.

This fishery is classified as Category III on the MMPA LOF, and NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority. This fishery was not included in the 2010 AD. Turtles have been documented in the pounds of pound net gear and/or weirs in Massachusetts, New York, Maryland, and Virginia, which operates similarly to the Rhode Island Floating Trap Fishery. There have also been anecdotal reports of sea turtle interactions in this fishery, but bycatch levels are unknown. NMFS proposes to include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a

fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types, such as the Virginia and Maryland pound nets, and NMFS intends to monitor this fishery.

Table 1 – State and Federal Commercial Fisheries included on the 2015 Annual Determination

Fishery	Years Eligible to Carry Observers
<u>Trawl Fisheries</u>	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2015-2019
Gulf of Mexico mixed species fish trawl	2015-2019
<u>Gillnet Fisheries</u>	
California halibut, white seabass and other species set gillnet (>3.5 in mesh)	2015-2019
California yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2015-2019
Chesapeake Bay inshore gillnet	2015-2019
Long Island inshore gillnet	2015-2019
North Carolina inshore gillnet	2015-2019
Gulf of Mexico gillnet	2015-2019
<u>Trap/pot Fisheries</u>	
Atlantic blue crab trap/pot	2015-2019
Atlantic mixed species trap/pot	2015-2019
Northeast/Mid-Atlantic American lobster trap/pot	2015-2019
<u>Pound Net/Weir/Seine Fisheries</u>	
Mid-Atlantic haul/beach seine	2015-2019
Mid-Atlantic menhaden purse seine	2015-2019
Rhode Island floating trap	2015-2019

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis leading to the certification is set forth below.

NMFS has estimated that approximately 32,540 vessels participating in the 14 fisheries listed in Table 1 would be eligible to carry an observer if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer based on the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage in times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot determine the specific number of vessels that would be requested to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time, and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, 50 CFR 222.404(b) states that an observer will not be placed on

a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared.

The information collection for the AD is approved under Office of Management and Budget (OMB) under OMB control number 0648-0593.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) on the issuance of the regulations to implement this observer requirement in 50 CFR part 222, subpart D. The EA concluded that implementing these regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of fisheries included on the AD, and therefore, this proposed rule would not change the analysis or conclusion of the EA. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document required under NEPA and specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This proposed rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: October 16, 2014.

Samuel D. Rauch, III,
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